I think the sentence underlined should encourage this Court to say that no actionable fraud or misrepresentation was proved, where such a finding does not conflict with any finding of the learned trial Judge. It is true that we cannot see the witnesses, but I think the plaintiff's case may be rejected on the three grounds, that certain matters in it show him to be worthy of belief generally, that the circumstances show his story to be inherently improbable, and that the evidence of Mr. Wilkins, whose independence and veracity he did not attempt to question, directly contradicts it.

Order accordingly.

L. STANLEY v. G. B. BULL.

[Orig. Civ. Juris. (Wilson, J.) November 6, 1951]

[K.L. — Originating Motion No. 16 of 1951]

Landlord and tenant — Certiorari — Motion for an Order of — Rent Control Ordinance, No. 6 of 1948, ss. 12 and 13.

The landlord of premises applied to the Rent Assessment Board for permission to apply to a Court to eject a tenant who at the date of the application was not in occupation himself or by any member of his family but, in fact, was on leave in England and some other unknown person was in occupation. The Board refused permission. On a motion for an order for the issue of the writ of certiorari, —

Held, that the issue of the writ of certiorari is strictly a matter of discretion and the Court in order to ascertain whether it is proper or not to grant the remedy may take into consideration not only the conduct of the applicant but also the circumstances of the case. As in the present case the tenancy had not been determined according to law, the application was refused.

Cases referred to :—

(1) *Rex v. Stafford Justices, ex parte Stafford Corporation* (1940) 2 K.B. 33.

(2) *Rex v. Surrey Justices* 5 Q.B. 466.

MOTION for an Order of Certiorari.

R. Ramani for the applicant.

M. Edgar for the respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — This is an Originating Motion for an Order of Certiorari that the proceedings before the Rent Assessment Board in the Municipal Area of Kuala Lumpur in Application No. 33 of 1951 be brought up before this Court and quashed.

The facts are that the respondent was the tenant of No. 88 Klang Road, Kuala Lumpur, and in my opinion, he still is. The applicant is the landlord of the premises. The landlord applied to the Rent Assessment Board under section 12 of Ordinance No. 6 of 1948 for the permission of the Board in writing to apply to a Court for an Order of Ejectment of the tenant. Under section 13 of the Ordinance no order or judgment for the recovery of possession of any premises comprised in any tenancy shall be made or given except in certain cases. In this case the applicant asked for an order or judgment for the recovery or possession of the premises on the grounds that neither the tenant nor any member of his family was in occupation of the premises or any part thereof (section 13(1)(i)). Evidence was given before the Rent Assessment Board from which it is clear that at the time of the hearing the respondent was on leave in England and some unknown army officer was, in fact, residing in the house. It has been argued by Mr. Ramani that it was not open to the Rent Assessment Board to consider or give any decision on the question of whether or no the respondent, whose furniture was still in the house, was still in occupation of the premises; that this is entirely a matter for the Court, and that they should therefore have given their permission for the applicant to apply to a Court for an Order of Ejectment.

In *Rex v. Stafford Justices, ex parte Stafford Corporation*[1] Sir Wilfrid Greene, M.R. in the course of his judgment stated as follows :—

"Now, in my opinion, the order for the issue of the writ of certiorari is, except in cases where it goes as of course, strictly in all cases a matter of discretion. It is perfectly true to say that if no special circumstances exist, and if all that appears is a clear excess of jurisdiction, then a person aggrieved by that is entitled ex debito justitiae to his order. That merely means this, in my judgment, that the Court in such circumstances will exercise its discretion by granting the relief. In all discretionary remedies it is well known and settled that in certain circumstances — I will not say in all of them, but in a great many of them — the Court, although nominally it has a discretion, if it is to act according to the ordinary principles upon which judicial discretion is exercised, must exercise that discretion in a particular way, and if a judge at a trial refuses to do so, then the Court of Appeal will set the matter right. But when once it is established that in deciding whether or not a particular remedy shall be granted the Court is entitled to inquire into the conduct of the applicant, and the circumstances of the case, in order to ascertain whether it is proper or not proper to grant the remedy sought, the case must in my judgment be one of discretion."

It is to be noted that the learned Master of the Rolls stated that the Court in order to ascertain whether it is proper or not proper to grant the remedy sought may take into consideration not only the conduct of the applicant but also the circumstances of the case. At page 44 he refers to the judgment of Blackburn, J. in *Rex v. Surrey Justices*[2], but then continues with the following sentence :—

"I do not read the observations in that judgment with reference to the right of the party aggrieved ex

debito justitiae as being in any way inconsistent with what I have stated. It merely means that unless there is something in the circumstances of the case which make it right to refuse the relief sought, the Court will grant it, and that that is the way in which the Court will and must on ordinary principles exercise its discretion."

Having regard to that exposition of the law, I think it is sufficient that I should say that in this case before the applicant could have succeeded before the Court in obtaining an Order for ejectment he would have had to have proved to the Court not only that neither the tenant nor any member of his family was in occupation of the premises or any part thereof, but also that the tenancy had been determined according to law. This is expressly provided by sub-section (3) of section 13 of Ordinance No. 6 of 1948, as amended by Ordinance No. 61 of 1949.

The tenancy was a monthly one and there was no termination of the tenancy in accordance with law. It is true that the applicant's then solicitor had written to the respondent on the 28th March, 1951, requiring him to surrender the tenancy of the said premises to the applicant before his departure on leave. This is not a legal notice to quit in the case of a monthly tenancy.

That being so it is quite clear to me that even if the Rent Assessment Board had given the applicant permission to apply to a Court for an Order of Ejectment his application for such an order must have failed.

In these circumstances, having regard to the decision of the Court of Appeal in the case to which I have referred above, this motion fails and is dismissed with costs.

Motion dismissed.

AH binti BAKAR v. ITAM bin SA'AD.

[Orig. Civ. Juris. (Briggs, J.) February 23, 1952]

[Alor Star — Civil Suit No. 178 of 1951]

Limitation — Limitation Enactment (Kedah) — Administration — Fraud — Limitation on and concealed — Express trust.

The administrator of a deceased person had land belonging to the estate transferred to him in his own name and not as representative of the deceased.

Held, as the beneficiaries were not aware of the fact that the land was registered in the name of the administrator time began to run only from the date such fraud came to their notice.

Held further, applying equitable principles the Court will not permit an express trustee to rely on the Limitation Enactment, at least until six years after the beneficiaries are, or ought reasonably to have been, aware of the breach of trust on which they desire to sue, whether such breach is or is not fraudulent.

Cases referred to :—

(1) *Gibbs v. Guild* (1882) 9 Q.B.D. 59 at 64.

(2) *Hunter v. Gibbons* (1856) 1 H. & N. 459.

CLAIM for a transfer of land.

Ismail Khan for the plaintiff.

Defendant in person.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Briggs, J. : — The plaintiff as administratrix *de bonis non* of the estate of her deceased father Bakar bin Haji Ariff claimed against the defendant as administrator of his deceased father Md. Sa'ad bin Omar a transfer of the land comprised in Surat Putus Kechik No. 4227, Mukim of Jerlon. Md. Sa'ad had been Bakar's attorney up to the time of Bakar's death and for this reason Letters of Administration were granted to him, although he was not a beneficiary. One asset of the estate was a beneficial interest by purchase in the land comprised then in Surat Putus Lama No. 2677, Mukim of Jerlon, but now in S.P.K. No. 4227, Jerlon. Md. Sa'ad, as administrator, obtained an order of Court for specific performance of the sale agreement; but owing to a pure error, for which Md. Sa'ad must accept the initial responsibility, the land was transferred to Md. Sa'ad personally, and not in terms "as representative" of Bakar deceased. At the hearing, though not in his defence, the defendant quite frankly and honestly admitted all this, and stated that his only defence was that of limitation. The transfer to Md. Sa'ad was made on the 27th August, 1932, so that approximately eleven years and two months had run for purposes of limitation, if time ran from the transfer.

The plaintiff claimed that limitation did not run, on the grounds of express trust and also concealed fraud. Dealing first with the second of these, it was alleged by the plaintiff, and not disputed, that the beneficiaries of Bakar's estate, while perfectly aware that the land in question formed part of that estate, were unaware that it was registered in Md. Sa'ad's own name, at least until April, 1948, when the defendant applied for Letters of Administration of his estate and included this land among the alleged assets. At all times prior to Md. Sa'ad's death, as the plaintiff claims, Md. Sa'ad duly distributed the income of the land to the beneficiaries. This is formally denied in the defence, but that document is a typical piece of petition writers' sharp practice, and the defendant did not really deny the truth of the plaintiff's allegation. That being so there was clearly no claim of right by